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C O N F I D E N T I A L SECTION 01 OF 03 BEIJING 004234

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TAGS: [ECON](#) [EFIN](#) [ETRD](#) [KIPR](#) [PREL](#) [CH](#)

SUBJECT: AUSTR STRATFORD PRESENTS WHITE PAPER ON XINHUA WTO  
VIOLATIONS TO XINHUA NEWS VP LU WEI

REF: A. BEIJING 2009

[1](#)B. BEIJING 1158

Classified By: Robert S, Luke, Economic Minister Counselor.  
Reasons 1.4 (b/d)

Summary

[1](#)1. (C) AUSTR for China Tim Stratford met with Xinhua News Vice President Lu Wei for the second time on April 20 to discuss Xinhua regulations requiring foreign financial information providers to sign a service contract with a Xinhua agent company. As a follow-up to a commitment he made in the first meeting on March 14, AUSTR Stratford presented Lu with a USTR White Paper outlining the areas where the Xinhua regulations appear to contradict WTO rules and provided an explanation of the White Paper's main points. Lu insisted that the regulations were not in violation of WTO but promised to provide a written response as soon as possible. Lu also presented AUSTR Stratford with an official copy of the Xinhua model agency agreement and examples of politically prohibited materials that had been disseminated by foreign companies with financial news. AUSTR Stratford asked Lu to separate politics from trade issues in preparing response to the White Paper and to provide regulations governing Chinese financial news distributors along with his response. He also requested that Xinhua postpone implementing regulations requiring companies to sign an agency contract before renewing their licenses. Lu said the dialogue had been productive but reiterated that Xinhua would "never give in" to foreign pressure to abolish the regulations. Both sides agreed to reconvene for further discussions once Xinhua completes its response to the White Paper. End summary.

USTR White Paper: Xinhua Regulations Clash with WTO

[1](#)2. (C) On April 20, AUSTR Stratford, accompanied by emboffs, met for the second time with Xinhua News Vice President Lu Wei and his staff (see reftel A). After providing Lu with a brief background on WTO, AUSTR Stratford outlined the four major points in the White Paper: That the Xinhua regulations apparently violate WTO rules on national treatment, market access, preservation of acquired rights,

and independent regulation. AUSTR Stratford noted that while Xinhua may not have intended to violate WTO rules when it issued the September 2006 regulations, an examination of WTO requirements suggests that the challenge is to ensure that the regulations are not interpreted or implemented in a way that violates WTO. AUSTR Stratford suggested that in light of detailed information in the White Paper, and the technicalities involved, Lu might consider having Chinese WTO experts examine it in order to inform Xinhua's response.

--National Treatment. The regulations, as published, require that foreign companies sign a service contract with the wholly-owned Xinhua subsidiary China Economic Information Service (CEIS), but do not require that Chinese companies sign such a contract. In order to interpret its regulations in such a way as to be consistent with WTO rules, Xinhua must demonstrate that all companies are subject to the same restrictions.

--Market Access. The requirement that foreign companies must sign a contract with CEIS in order to distribute financial information appears to be a barrier to direct access. Since China's commitments related to the General Agreement on Trade and Services call for the elimination of such limitations, this requirement appears to violate that commitment.

--Acquired Rights. WTO rules require that rights enjoyed by foreign companies before a country joins the WTO must be retained after joining. American companies had business licenses before China joined the WTO that allowed them access to customers without the kind of restrictions imposed in the new regulations. Therefore, the regulations appear to violate this principle.

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--Independent Regulation. When it joined the WTO, China agreed to keep regulatory functions independent from Chinese entities engaged in the same business, with the exception of railroad transportation and express delivery services. Xinhua is a news provider but is now acting as a regulator for companies that compete with it, which is a clear problem under the WTO commitments China has made.

VP Lu Wei: Xinhua's Regulations Do Not Violate WTO

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13. (C) After thanking AUSTR Stratford for "fulfilling your promise" to deliver a White Paper within a 30-day period, and pledging to study it carefully, VP Lu launched into a point-by-point rebuttal of AUSTR Stratford's presentation. Lu insisted that the Xinhua regulations do not conflict with WTO rules, including in the four areas outlined in the White Paper.

--National Treatment. Lu said that foreign companies are not subject to unequal treatment because Chinese financial information providers are subject to "other regulations" which impose restrictions similar to those imposed on foreign providers by Xinhua.

--Market Access. Lu reiterated Xinhua's previous assertions that its regulations do not limit market access as long as the content does not violate Chinese law. The Xinhua agent company is not a financial information provider and receives no profit in the transactions. Its sole responsibility is to serve its customers.

--Acquired Rights. Lu denied that foreign providers had been denied rights that they enjoyed before the regulations were issued. Brushing aside the WTO legal points raised by AUSTR Stratford, Lu returned to arguments he had made in the first meeting, claiming that "there has not been one case" where a foreign company's interests had been harmed by the new regulations. On the contrary, he said, there has been a surge in finance news providers' business activities and many

foreign companies previously denied access were now requesting permission to enter the market.

--Independent Regulation. Again, Lu reiterated his previous claim that Xinhua's role as both regulator and competitor is in line with Chinese and international norms because the two functions are kept separate in practice. He said that as a competitor, Xinhua is not allowed to pass judgment on the regulations. He cited remarks by Xinhua President Tian Congming that the news agency welcomes international scrutiny of its operations to see if it abuses its right to regulate the market for its own financial gain. Lu underscored that Xinhua's regulatory role was assigned by the Chinese government according to Chinese law and was not something Xinhua acquired on its own. Lu cited WTO clauses number 20 and number 21 that grant exemptions to member countries on the core issues of national security and public ethics as justification for Xinhua's demand that it regulate content. Lu concluded by saying China will honor all commitments it has made to WTO but it did not commit to preventing Xinhua or any Chinese news agency acting as a regulator.

¶4. (C) Lu laced his presentation with references to recent examples of politically sensitive material distributed with financial news, including Dow Jones reports of Uighur dissident Rebiya Kadeer's criticism of China and articles on the abuse of psychiatry for political purposes and the need for greater U.S. funding of democracy activists in China. Lu provided AUSTR Stratford with copies of the offending Dow Jones material and said that Xinhua was now looking carefully at the "tax situation" of foreign financial service providers to see whether they had received permission from the commercial and tax bureaus to do business in China.

¶5. (C) Lu presented AUSTR Stratford with an official pamphlet containing the model Xinhua agency agreement, stating that Xinhua, too, had fulfilled its promise at the last meeting to be "transparent regarding its regulatory

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role." He said Xinhua wanted "let the whole world decide for itself" whether Xinhua is imposing restrictions on foreign providers inconsistent with WTO rules.

Xinhua Review of White Paper, Next Steps  
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¶6. (C) Lu said his agency would carefully review the USTR White Paper with the advice of China's WTO experts and "quickly" provide a written response so the discussion could continue. AUSTR Stratford asked Lu to provide, in addition, the other regulations that govern Chinese financial service providers and requested that Xinhua postpone implementing regulations requiring companies to sign an agency contract before renewing their licenses.

¶7. (C) AUSTR Stratford said he considered Lu's conclusions that the Xinhua regulations did not violate WTO rules to be "preliminary," and urged Lu, in preparing his response to the White Paper, to separate politics from trade issues and to consider possible contradictions between Chinese law and international law. In light of Lu's preliminary judgment, the two sides have two choices, he said: to continue talking and making adjustments in order to reach agreement; or, as a last resort, asking the WTO to help make the judgment. Stratford noted that he had found the two meetings very productive and hoped to continue discussions to resolve the differences between the two sides. At this point, USTR was not considering taking the case to the WTO. He repeated that the challenge was to find a way to change, interpret, or implement the regulations in a way that is consistent with China's WTO commitments.

¶8. (C) Lu expressed agreement with these points and concurred that the meetings had been productive but continued to strongly reject the suggestion that China is in violation

of WTO. He said that although politics and trade are separate issues, "politics sometimes intrudes on trade" and when this happens, he gets involved. China "will simply not allow" foreign financial news distributors to disseminate proscribed political material and thus "will never give in" to foreign pressure to renounce the regulations. Lu said he looked forward to dialogue to resolve the issues and that "everything is negotiable" as long as the regulations are not abolished. Both sides agreed to reconvene for further discussions once Xinhua completes its response.

19. (U) This cable was cleared by AUSTR Stratford.  
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